

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL IRICK,

Plaintiff,

vs.

GRAHAM NOBLE & ASSOCIATES, et al.,

Defendants.

CASE NO. 09cv0908 JM(AJB)

ORDER VACATING ENTRY OF
DEFAULT (DOCKET NO. 10)


On the court's own motion, the Clerk's Entry of Default (Docket No. 10) is hereby vacated. As a prerequisite to entry of default, Fed.R.Civ.P. 55(a) requires that the party seeking entry of default must show by "affidavit or otherwise" that the prospective defaulting party "has failed to plead or otherwise defend" the action. Fed.R.Civ.P. 55(a). The original complaint, filed on April 29, 2009, named Graham Noble & Associates as the only defendant. (Docket No. 1). Plaintiff also submitted a returned executed summons for this defendant. (Docket No. 3).

The First Amended Complaint, filed on June 30, 2009, named four additional defendants: Graham, Noble & Associates, L.L.C.; Graham & Noble; Graham, Noble & Associates Bookkeeping; and Graham Beagle and Associates, Inc. (Docket No. 4). There is no returned executed summons for any of these four defendants. Furthermore, the proof of service submitted by Plaintiff in support of his request for entry of default's represents that these four defendants were served by mail. (Docket No. 9-2). As simple mail service is inadequate to commence the action against the four new defendants, Fed.R.Civ.P. 4, these defendants, based upon the record currently before the court, are

1 under no obligation to “plead or otherwise defend” the action. Fed.R.Civ.P. 55(a). Consequently,
2 Plaintiff fails to establish that entry of default is warranted under the circumstances and the court
3 vacates the Clerk’s Entry of Default. Nothing in this order prevents Plaintiff from seeking, a third
4 time, to establish default.

5 **IT IS SO ORDERED.**

6 DATED: December 16, 2009

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8 Hon. Jeffrey T. Miller
United States District Judge

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